UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

CFC/PCL, a Joint Venture,[1]

Employer,

and Case 27-RC-8607

CARPENTERS DISTRICT COUNCIL
OF KANSAS CITY AND VICINITY,

Petitioner.

DECISION AND ORDER

On April 30, 2010, Carpenters District Council of Kansas City and Vicinity (Petitioner), filed a petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent the carpenter craft employees employed by the CFC/PCL, Joint Venture (Joint Venture or Employer). The petitioned-for bargaining unit was described as:

> Including: All full-time and regular part-time general foremen, foremen, journeymen, apprentices, and provisional employees performing work in any branch of the carpentry trade for the Employer on any jobsite in Colorado.
>
> Excluding: Professional employees, clerical employees, laborers, guards, and supervisors as defined by the Act.[2]

[1] The parties stipulated that the Joint Venture was a general contractor comprised of Colorado First Construction (CFC), and PCL Construction Services, Inc., for the sole purpose of a hotel/condominium construction project at Snowmass, Colorado.

[2] The Employer declined to stipulate that the petitioned-for unit was appropriate because it included general foreman. The Employer contended that general foremen should be excluded because they are statutory supervisors under Section 2(11) of the Act. The parties agreed to defer litigation of the supervisory issue until I have reached a determination on whether the petition should be dismissed as urged by the Employer.

A hearing in this matter was held on May 11, 2010 before Hearing Officer Renee C. Barker. The Joint Venture contends that the petition is inappropriate, and should be dismissed, on the basis that the Joint Venture does not currently have any employees, and has not employed any bargaining unit carpenters since approximately December 2009, when its work on the Snowmass project was officially completed. The Employer further contends that the Joint Venture does not have any outstanding bids for work and has no plans for future work.

The Petitioner does not dispute that the Snowmass project has ended, but contends that petition is appropriate nonetheless because the Joint Venture is still in existence and the Joint Venture employed bargaining unit carpenters within the *Daniel* construction industry voter eligibility formula time period.[3]

For the reasons set forth below, I find that it would not effectuate the policies of the Act to conduct an election because the Snowmass project for which the Joint Venture was formed has ended. Accordingly, I shall dismiss this Petition.

STATEMENT OF THE CASE

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I find:[4]

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[5]

[3] See *Daniel Construction Company*, 133 NLRB 264 (1961), as modified in 167 NLRB 1078 (1967); *Steiny & Co.*, 308 NLRB 1323 (1992).
[4] The parties waived their right to file briefs in this matter.
[5] Before the close of the hearing, the Hearing Officer granted the Employer's motion to quash Petitioner's subpoena. The Petitioner did not specifically seek to preserve the subpoena issue on the record after the Hearing Officer granted the Employer's motion to quash.

2. The parties stipulated, and I find, that the Employer, CFC/PCL, a Joint Venture, was engaged in commerce within the meaning of section 2(6) and (7) of the Act and that it is subject to the jurisdiction of the Board. Specifically, I find that the Joint Venture previously had a facility located in Snowmass, Colorado, where it was engaged in the general building construction industry. During the last calendar year, the Joint Venture purchased and received at its Snowmass, Colorado facility, goods and services valued in excess of $50,000 from suppliers located outside the State of Colorado.
3. The labor organization involved claims to represent certain employees of the Employer.
4. Based upon the record, no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons set forth below.

STATEMENT OF FACTS

A. Bargaining History

While there is scant record evidence regarding the bargaining history between the Joint Venture and the Union, there is evidence that the Petitioner represented a bargaining unit of carpenters during the duration of the Joint Venture's Snowmass construction project. The evidence establishes that the Joint Venture made payments to various trust funds pursuant to the bargaining relationship, and has continued to file trust fund reports since the end of the project in December 2009. The reports filed since January 1, 2010, have reported zero hours worked. While the record is silent as to the terms of the collective-bargaining agreement and the nature of the bargaining relationship, the parties stipulated that there is no contract bar to this proceeding.

I also take administrative notice that the Petitioner has historically represented PCL Construction Services, Inc., carpenter craft employees in a separate bargaining unit. In this regard, the Petitioner filed a Petition in Case No. 27-RC-8605, on the same date it filed the instant Petition, seeking to convert its

historical Section 8(f) bargaining relationship to a Section 9(a) relationship. That Case is also pending before me and my decision on the supervisory issue raised therein will be addressed in a separate decision.

B. The Joint Venture

CFC and PCL formed their Joint Venture to bid on the hotel/condominium project at Snowmass for a company called Related WestPac. The project initially consisted of two phases of construction. The Joint Venture completed its work in approximately October 2009 on phase one, which was the Viceroy Hotel. At that time, the Joint Venture turned the project over to the owner after the owner was issued a temporary certificate of occupancy (TCP). The hotel opened and was in operation throughout the ski season. After the TCP issued, the Joint Venture did retain a small number of carpenters and other craft employees to perform so-called "punch list" work in order to complete the construction to the owner's satisfaction. The last carpenters left the project by the end of December 2009. The owner has since gotten its permanent occupancy permit.

The Joint Venture commenced work in the fall of 2009 on phase two, which was the condominium portion of the project. Apparently, phase two had been under consideration for cancellation for several years, but Related WestPac did not officially cancel phase two until after the Joint Venture had started construction on condominium buildings 7 and 8. The cancellation of phase two has resulted in the Joint Venture filing a $3 Million lien against Related WestPac. That lien is currently in litigation, which will likely last several years. Because of the litigation, the Joint Venture has not been legally dissolved, although it is not currently performing any construction work at Snowmass or any other location. The record evidence establishes that the Joint Venture formed and existed solely for the Snowmass construction project, and that the Joint Venture has not bid any other work, and does not intend to do so.

CONCLUSIONS AND FINDINGS

A. Applicable Board Authority

In the construction industry, the Board has held that where an employer's operations are scheduled for imminent completion, and there is no evidence to support a finding that the employer has bid on future work or intends to do so, no useful purpose would be served by directing an election. See *Davey McKee Corp.*, 308 NLRB 839 (1992), and the cases cited therein.[6] For instance, in *M. B. Kahn*, 210 NLRB 1050 (1974), the Board refused to direct an election where approximately three to five months of work remained at the time the regional director issued a decision.

Similarly, in the manufacturing industry, the Board has held that where a plant is scheduled for imminent closure, it does not effectuate the policies of the Act to proceed to an election. See, e.g., *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *Larsen Plywood Co.*, 223 NLRB 1161 (1976); *Martin Marietta Aluminum, Inc.*, 214 NLRB 646 (1974); *Plum Creek Lumber Co.*, 214 NLRB 619 (1974); and *Armour & Co.*, 62 NLRB 1194 (1945).

B. Findings

The record establishes, and the Petitioner does not dispute, that the work preformed by the Joint Venture on the Snowmass construction project ended in December 2009. The Petitioner appears to contend that if the Joint Venture still exists as a legal entity, notwithstanding that the project for which it was formed

[6] See also, *Fish Engineering & Construction Partners, Ltd*., 308 NLRB 836 (1992), decided the same day as *Davey McKee*, in which the Board reached a contrary result where the facts established that the employer had an outstanding bid with its current contractor.

has ended, it is entitled to a Board election because there are eligible voters pursuant to the *Daniel* construction eligibility formula. The Petitioner cited no legal authority for this proposition, and I find no merit to the Petitioner's contention. In this regard, the Board, in *Steiny & Co*., supra, 308 NLRB 1323, specifically left standing its imminent cessation of work line of cases in the construction industry, while addressing the modifications to the construction industry voter eligibility formula adopted by the Board in *S. K. Whitty & Co.*, 304 NLRB 776 (1991):

> That aspect of *S. K. Whitty* concerning whether any eligibility formula should be applied when a construction employer has no successful bid or committed work for the immediate future is not disturbed by our decision here. Cf*. Fish Engineering & Construction*, 308 NLRB 836 (1992)(Member Devaney, dissenting); *Davey McKee Corp*., 308 NLRB 839 (1992). [*Id.*, FN17]

The record evidence establishes that the Joint Venture has not employed employees in the petitioned-for bargaining unit for more than four months, and Petitioner did not rebut the Employer's evidence that it has no other ongoing construction projects within the geographical scope of the unit or that it has such work under bid. Therefore, I find that the record as a whole provides a compelling basis for dismissal of the petition in this case and no useful purpose would be served by directing an election. However, should the Employer acquire additional construction projects within the geographical scope of the unit covering the classification of employees described in the Petition, I will entertain a motion by the Petitioner to reinstate the Petition.

ORDER

Accordingly, I find that it would not effectuate the policies of the Act to direct an election in this case. I shall therefore dismiss the petition.

PROCEDURES FOR FILING A REQUEST FOR REVIEW

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, D.C., by close of business on **June 18, 2010, at 5 p.m. Eastern Time,** unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.[7]

A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

[7] A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab, click on E-Filing, and follow the detailed directions.

The responsibility for the receipt of the request for review rests exclusively with the sender.

A failure to timely file an appeal electronically will not be excused on the basis of a claim that the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Denver, Colorado, this 4th day of June, 2010

_____

Wanda Pate Jones
Regional Director
National Labor Relations Board, Region 27
600 Seventeenth Street
700 North Tower, Dominion Towers
Denver, Colorado 80202-5433